



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/080,568 | 02/25/2002 | Stephen M. Gates | YOR919980324 US2 | 9141 |
| 21254 | 7590 | 07/14/2005 | EXAMINER | |
| MCGINN & GIBB, PLLC 8321 OLD COURTHOUSE ROAD SUITE 200 VIENNA, VA 22182-3817 | | | ART UNIT | PAPER NUMBER |

DATE MAILED: 07/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

47

| | | | |
|--|--------------------------------------|-------------------------------------|--|
| Notification of Non-Compliant Appeal Brief (37 CFR 41.37) | Application No. 10/080,568 | Applicant(s) GATES ET AL. | |
| | Examiner Phat X. Cao | Art Unit 2814 | |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 16 May 2005 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file a complete new brief in compliance with 37 CFR 41.37 within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer. **EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed or confirmed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☒ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

see attached papers.

Notification of Non-Compliant Appeal Brief

1. The appeal brief filed on 5/16/05 is defective because it does not contain a correct copies of the appealed claims, it contains the new issues amended claims filed on 5/13/05. Specifically, the amended claims (5/13/05) filed after the advisory action, but prior to the date of filing appeal brief, will not be entered because they raise new issues that would require further consideration and/or search. It is noted that incorporating the limitations of a dependent claim into an independent claim is not the same as rewriting dependent claim into independent form. In this case, incorporating the limitations of a dependent claim 36 into an independent claim 11 would change the scopes of the independent claim 11 because the independent claim 11 previously does not contain the limitations of the dependent claim 36. Thus, the scopes of dependent claims 12-18, 37, and 39-43 would also be changed because they depend from the independent claim 11.

Similarly, incorporating the limitations of the dependent claim 36 into the independent claims 26 and 38 would change the scopes of the independent claims 26 and 38 because the independent claims 26 and 38 previously does not contain the limitations of the dependent claim 36. Thus, the scopes of dependent claims 27-31 and 33-35 would also be changed because they depend from the independent claim 26.

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phat X. Cao whose telephone number is 571-272-1703. The examiner can normally be reached on M-F.

Art Unit: 2814

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wael Fahmy can be reached on 571-272-1705. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

PC
July 13, 2005



PHAT X. CAO
PRIMARY EXAMINER